



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6510-99
4 February 2000

CAPT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 14 October 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 22 November 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness reports should stand. Specifically regarding the disputed report for 6 June to 13 September 1992, they found that the narrative did not violate the prohibition against "faint praise." Since they found no material defect in your performance record, they had no basis to grant any relief regarding your failure by the Fiscal Year 2000 Major Selection Board. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6510-99
IN REPLY REFER TO:
1610
MMER/PERB
OCT 14 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMC

Ref: (a) Capt [REDACTED] DD Forms 149 of 12 Jun 99(2) and
6 Jul 99
(b) MCO P1610.7C w/Ch 1-6
(c) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 October 1999 to consider Captain [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 920225 to 920605 (TR) -- Reference (b) applies
- b. Report B - 920606 to 920913 (TD) -- Reference (b) applies
- c. Report C - 970923 to 980731 (DC) -- Reference (c) applies

2. The petitioner contends that all three reports contain procedural errors and inaccuracies and were "severely detrimental" to his consideration for promotion to the grade of Major. With regard to Report A, the petitioner alleges that both he and Lieutenant [REDACTED] were evaluated as the "Company Executive Officer" during the same reporting period. With this in mind, and elaborating on Lieutenant [REDACTED]'s significant absence during the three months covered, the petitioner believes that it was unjust for him to be ranked below that officer. Concerning Report B, the petitioner contends that certain comments in Section C render the report "adverse"; that he should have been afforded an opportunity to acknowledge and respond to the evaluation. He also believes the report contains an "unacceptable comment" (i.e., referring to a lack of experience), and further challenges the validity of the appraisal in that the Reporting Senior did not sign the report until some seven months after he had detached from the unit. As additional evidence of the inaccuracies and injustices prevalent within Report B, the petitioner points out that he was never counseled on his performance, not allowed to view the completed fitness report (evidenced by the absence of his signature in Item 22), and

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that Colonel [REDACTED] (the Reviewing Officer) failed to mark the Reviewing Officer's Certification. Finally, the petitioner points out that Colonel [REDACTED] comments contradict those of the Reporting Senior; and that the grammatical errors in the report lend further credence to the other arguments offered. Regarding Report C, the petitioner alleges that his ranking as "seven of nine" captains is inaccurate. He points out several comments by other officers which he believes substantiates his claim.

3. In its proceedings, the PERB concluded that:

a. When the petitioner signed Item 22 of Report A, he verified the information contained in Section A and acknowledged that he had viewed the completed report. At no time in the intervening seven years did he challenge the report's accuracy. That fact notwithstanding, the Section C narrative clearly addresses the petitioner's responsibilities as a rifle company executive officer.

b. The Board finds Colonel [REDACTED]'s advocacy letter somewhat ambiguous as to Lieutenant [REDACTED]'s precise assignment. Further, Colonel [REDACTED] made no definite statement that the petitioner was not the executive officer. He merely suggested he probably should have been the weapons platoon commander. Such a probability some seven years after the fact cannot be discerned since Lieutenant [REDACTED] is no longer on active duty and his records are therefore not readily available to confirm billet/duty status.

c. The Board believes the petitioner has misinterpreted the comments in Section C of Report A. In his appeal, the petitioner states the Reporting Senior continues to "... elaborate about my performance as the company's Weapon's Platoon Commander." The Reporting Senior made no such elaboration. What Section C indicates is that the petitioner "... coordinated the company's fire support assets and integrated the Weapons Platoon Sections into a cohesive defensive fire plan." Nothing in that wording infers or implies the petitioner was the platoon commander. Likewise, the petitioner's contention that the Reporting Senior acknowledged his "abilities as the actual Company Commander" are rejected. Section C of Report A notes the petitioner's performance as "... acting CO Cmdr. . . (during) . . . patrolling operations for Ocean Venture 92." Acting is not equivalent to actual, and the narrative portion is only

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addressing a specific tactical function -- not the all-encompassing duties of a rifle company commander.

d. The petitioner provides no convincing evidence that Report A is anything less than an accurate and objective account of his performance. Even in his advocacy letter, Colonel [REDACTED] does not question the "outstanding" recording of the petitioner's performance. What appears to be the confusion is that seven years after the fact he is not sure what the petitioner's billet was and why he was graded as "2 of 2" in the outstanding column.

e. While this Headquarters and the PERB do not condone the late submission of fitness reports, that singular factor does not invalidate an otherwise acceptable performance appraisal. Report B does not bear the petitioner's signature in Item 22. First, that signature attests to the Section A data and the petitioner does not contest the accuracy of any of that information. Second, a signature acknowledges seeing the Reporting Senior's completed evaluation -- not that the Marine reported on agrees with the evaluation. While an administrative error, the absence of the petitioner's signature in Item 22 is not considered so egregious as to be an invalidating factor. The Board has, however, requested the Personnel Management Support Branch (MMSB) to return Report B to the petitioner for his certification as to the accuracy of the information contained in Section A.

f. The Board views Report B as an evaluation of a professionally nurturing lieutenant, making the transition from line infantry unit to a reconnaissance unit in a high tempo, fast paced environment. The Reporting Senior's qualifying comments note that the petitioner faced some tactical planning challenges, recognized them, and overcame the obstacles. This is considered nothing more than the type of progress expected of a lieutenant. Contrary to the petitioner's contentions, the Reviewing Officer did not contradict the Reporting Senior. Rather, he reinforced the petitioner's positive efforts and progress.

g. While Lieutenant Colonel [REDACTED] did not mark any one of the four blocks in the Reviewing Officer's Certification, it is clear from his extensive review that he concurred with the Reporting Senior based on his own sufficient observation. Again, not an invalidating factor.

h. There is absolutely nothing remotely contentious regarding Report C. It was written and reviewed in a timely

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 ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
 CAPTAIN [REDACTED], [REDACTED] USMC

manner and is reflective of stellar performance as a company commander during a ten-month period.

i. While Lieutenant Colonel [REDACTED]'s advocacy letter is certainly complimentary, the Board is hasty to point out that it was addressed to the President of the FY01 Major Selection Board and in no way refutes his evaluation contained in Report C. Whatever the good intentions of Colonel [REDACTED], he offers nothing that invalidates the Reporting Senior's evaluation. First and foremost, the "7 of 9" ranking is the Reporting Senior's assessment, not that of the Reviewing Officer. When he reviewed Report C, Colonel [REDACTED] had ample opportunity to offer his own breakout for all the captains in his MEU; he chose not to. To further confuse the issue, Colonel [REDACTED]'s claim concerning the petitioner's NMCC medal is incorrect. Report C ended on 31 July 1998 and the NMCC medal was awarded for action from sometime in August 1998 through November 1998 (a period subsequent to the ending date of Report C).

j. Colonel [REDACTED]'s advocacy letter seems to infer that Lieutenant Colonel [REDACTED] did not recognize the petitioner's potential for promotion and generally overlooked his sterling qualities. Nothing could be further from reality, since the report enumerates the petitioner's qualities and the Reporting Senior specifically states the petitioner ". . . has outstanding potential as a Field Grade Officer. Promote and send to ILS."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Captain [REDACTED]'s official military record. The limited corrective action identified in subparagraph 3e is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]
 [REDACTED]
 Colonel, U.S. Marine Corps
 Deputy Director
 Personnel Management Division
 Manpower and Reserve Affairs
 Department
 By direction of the Commandant
 of the Marine Corps



DEPARTMENT OF THE NAVY
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QUANTICO, VIRGINIA 22134-5103

6510-99

IN REPLY REFER TO:

1600
MMAA-4
22 Nov 99

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Request for Advisory Opinion in the case of
Captain [REDACTED] USMC
of 18 Nov 99

1. Recommend disapproval of Captain [REDACTED] request for removal of his failure of selection.

2. Per the reference, we reviewed Captain [REDACTED] record and petition. He failed selection on the FY00 USMC Major Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Transfer fitness report of 920225 to 920605, the Temporary Duty fitness report of 920606 to 920913, and the Directed by the Commandant of the Marine Corps fitness report of 970923 to 980731. Captain [REDACTED] requests removal of his failure of selection.

3. In our opinion, the petitioned reports do present competitive concern to the record. However, Captain [REDACTED] has other areas of competitive concern in his record that contributed to his failure of selection.

a. **Section B Marks.** The record reflects less competitive Section B marks in Administrative Duties, Handling Enlisted Personnel, Tactical Handling of Troops, Endurance, Military Presence, Attention to Duty, Judgment, Force, and Economy of Management.

b. **Overall Value and Distribution.** Captain [REDACTED] overall Value and Distribution marks are less competitive. He has eighteen officers ranked above him and 9 below, placing him in the bottom half of the pack. Had the contested reports been pulled he would have eight officers ranked above him and seven below, placing him in the middle of the pack. Of particular note, while serving in 0302 billets he has fifteen officers ranked above and two below, placing him near the bottom of the pack while serving in key billets in his MOS.

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[REDACTED] USMC

c. **Professional Military Education (PME).** According to his Official Military Performance File and Master Brief Sheet, Captain [REDACTED] had not completed the requisite PME for his grade as required by Marine Corps Order P1553.4 prior to the convening of the FY00 Board. He attended the Infantry Officer Advanced Course but did not complete Amphibious Warfare School Distance Education Program Phase I (8500).

4. In summary, we believe Captain [REDACTED] petition is without merit. Though the petitioned reports do present competitive concern, his record has other areas of competitive concern that contributed to his failure of selection. Therefore, we recommend disapproval of Captain [REDACTED] request for removal of his failure of selection.

5. Point of contact is [REDACTED], [REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division